

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFF J. WALBY,

Plaintiff,

Case No. 11-CV-13312

vs.

HON. GEORGE CARAM STEEH

AVIVA USA,

Defendant.

_____/

ORDER REQUIRING SUPPLEMENTAL BRIEFS

The parties were before the court for oral argument on defendant's motion for summary judgment on October 29, 2012. During argument, the issue of mitigation of damages by plaintiff was explored by the court with each party's counsel. Defendant's counsel referred to defendant's Exhibit G as proof that an accounting history of plaintiff's policy was provided to plaintiff prior to the filing of this lawsuit, and prior to at least two offers to reinstate the insurance policy. The importance of Exhibit G is apparently that it would have been unreasonable for plaintiff to fail to make the requested payments to reinstate the policy with such information in his possession. In other words, according to defendant, the information in the accounting history should have reassured plaintiff that the deficiency amounts requested by defendant to reinstate the policy were accurately calculated and were indisputably owed by plaintiff. Plaintiff's counsel stood firm in his statement that the referenced accounting was not turned over to plaintiff until after the lawsuit was commenced. Furthermore, plaintiff's counsel stated that his client

did not know that the amount defendant failed to withhold from the “maximum loan amount” was \$58,000.00 until after the litigation started.

The court has made a thorough review of the exhibits and is unable to confirm when defendant’s Exhibit G, or the relevant information contained therein, was provided to plaintiff. Now, therefore,

IT IS HEREBY ORDERED that plaintiff and defendant respond specifically to the issue outlined above, in writing, with proper references to record evidence on or before November 21, 2012.

Dated: October 31, 2012

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on October 31, 2012, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk